

18, 1994, except that state regulation of such engines that are used in motor vehicles or vehicles used solely for competition is precluded. EPA believes that the language of Clean Air Act section 302(z) generally excluding emissions resulting directly from nonroad engines and nonroad vehicles from the definition of stationary source could not be applied until after the definition of nonroad engine was specified in final regulations promulgated by EPA. EPA believes that if the exclusionary language of section 302(z) were applied before EPA's definition of nonroad engine became final, states would have been frustrated from regulating internal combustion engines manufactured during that time, given the uncertain nature of the definition of such engines. EPA believes that Congress did not intend states to be prevented from regulating these engines before a final EPA definition was promulgated. EPA does not believe that Congress intended the exclusionary language of section 302(z) regarding nonroad engines and vehicles to be applied retroactively to engines, vehicles, and equipment regulated pursuant to a permit issued before the date that the terms nonroad engine and nonroad vehicle were defined.

2. EPA further believes that internal combustion engines manufactured prior to July 18, 1994 are not preempted, under Clean Air Act section 209, from state regulation. The two sections of the Act preempting state regulation of nonroad engines, section 209(e)(1) and section 209(a) (as incorporated by section 213(d)), refer to "nonroad engines subject to regulation under this Act" or to engines "subject to this part" (i.e., part A of title II of the Act). EPA believes that, until EPA promulgated final regulations defining nonroad engines and subjecting such engines to regulation, these engines were not preempted from state regulation under the Act, as the engines were not yet defined as nonroad engines, nor were they subject to any regulation under title II of the Act. In the regulations with an effective date of July 18, 1994, EPA has issued final rules defining nonroad engines and, thus, subjecting nonroad engines to regulation under part A of title II of the Act. Accordingly, EPA believes that pursuant to Clean Air Act section 209, state regulation of new nonroad engines is preempted for engines manufactured on or after that date, and is not preempted as to engines manufactured before that date.

3. Moreover, EPA believes that states are not precluded under section 209 from regulating the use and operation of nonroad engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded once the engine is placed into service or once the equitable or legal title to the engine or vehicle is transferred to an ultimate purchaser, as long as no cer-

tification, inspection, or other approval related to the control on emissions is required as a condition precedent to the initial retail sale, titling, or registration of the engine or equipment. EPA believes that states are not prevented by section 209 from requiring retrofitting of nonroad engines in certain circumstances once a reasonable time has passed after the engine is no longer new, as long as the requirements do not amount to a standard relating back to the original manufacturer. Therefore, EPA believes that modest retrofit requirements may be required after a reasonable amount of time (e.g., at the time of reregistration or rebuilding) and more significant retrofit requirements may be required after a more significant period of time (e.g., after the end of the useful life of the engine).

Subpart B—Emission Standards and Certification Provisions

§ 89.101–96 Applicability.

The requirements of subpart B are applicable to all new nonroad compression-ignition engines subject to the provisions of subpart A of part 89, pursuant to the schedule delineated in § 89.102–96.

§ 89.102–96 Effective dates, optional inclusion.

(a) This subpart applies to all engines described in § 89.101–96 with the following gross power output and manufactured after the following dates:

(1) Greater than or equal to 37 kW but less than 75 kW and manufactured on or after January 1, 1998;

(2) Greater than or equal to 75 kW but less than 130 kW and manufactured on or after January 1, 1997;

(3) Greater than or equal to 130 kW but less than or equal to 560 kW and manufactured on or after January 1, 1996;

(4) Greater than 560 kW and manufactured on or after January 1, 2000.

(b) A manufacturer can optionally certify engines manufactured up to one calendar year prior to the effective date of mandatory certification to earn emission credits under the averaging, banking, and trading program. Such optionally certified engines are subject to all provisions relating to mandatory certification and enforcement described in this part.